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104TH CONGRESS, *2d Session* | SENATE | REPORT 104–292

OIL SPILL PREVENTION AND RESPONSE IMPROVEMENT ACT

JUNE 26, 1996.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1730]

The Committee on Environment and Public Works, to which was referred the bill (S. 1730), to amend the Oil Pollution Act of 1990 to make the Act more effective in preventing oil pollution in the Nation's waters through enhanced prevention of, and improved response to, oil spills, and to ensure that citizens and communities injured by oil spills are promptly and fully compensated, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

GENERAL STATEMENT

BACKGROUND

The Oil Pollution Act of 1990

The Oil Pollution Act of 1990 (OPA) was signed into law by President Bush on August 18, 1990. The Act established for the first time a comprehensive Federal oil spill response and liability legislative framework and ushered in several landmark reforms. First of all, it strengthened measures for oil spill prevention by requiring all oil-carrying tank vessels over 5,000 gross tons constructed after 1990 to have double-hulls, phasing out operation of

all oil-carrying single hull tank vessels, and requiring the Coast Guard to issue interim spill prevention rules for single-hull vessels.

Second, OPA increased the financial consequences of oil spills. It expanded the scope of polluter liability by imposing strict liability for the clean-up costs and damages that result from an oil spill. OPA also raised the liability limit for vessels. It provided that the higher limit could be superseded, however, if the responsible party engaged in gross negligence, willful misconduct, or violated any applicable Federal safety, construction, or operating regulation.

Third, OPA strengthened oil spill response capabilities and advanced planning. It expanded the items for which compensation could be obtained from the Oil Spill Liability Trust Fund (Fund). It established a new planning and response system, which included the National Response Unit, U.S. Coast Guard Strike Teams, 10 Coast Guard District Response Groups, and Area Committees. OPA also mandated preparation of Area Contingency Plans as well as an approved vessel response plan for each oil-carrying vessel.

Finally, OPA facilitated access to funds to ensure prompt and complete recovery for damages arising from an oil spill. It established the following categories of claimants and damages for which compensation is available from a responsible party: (1) any claimant, for loss of profits or impairment of earning capacity; (2) the government, acting as a public trustee for injured natural resources; (3) owners of real or personal property, for economic losses arising from destruction of their property; (4) a person who relies on injured natural resources for subsistence, for injury to such resources; (5) the government, for losses in tax revenue arising from a spill; and (6) the government, for net costs of providing additional public services as the result of cleaning up a spill. It also expanded the items for which compensation could be obtained from the $1 billion Fund.

The North Cape spill

On January 19, 1996, a barge, the North Cape, ran aground off the southern coast of Rhode Island. Despite strong efforts by the U.S. Coast Guard and others, the grounding resulted in the largest oil spill in Rhode Island's history. The damage to the marine environment was extensive. Much of the spilled oil washed up onto nearby beaches, along with the carcasses of many fish, birds, and thousands of lobsters.

In response to the North Cape spill, the committee held two oversight hearings to assess the implementation of Federal oil pollution laws. The first hearing was held on February 14, 1996 in Narragansett, RI, and the second hearing was held on March 27, 1996 in Washington, D.C. The committee learned from the hearings that although OPA has brought about faster and more effective spill response since its enactment, there is room for improvement.

The general consensus of the testimony was that equipping oil-carrying tank vessels with double hulls is the single most effective means of reducing the risk of a spill by such vessels. Witnesses recommended other prevention measures, such as operable anchors, manned barges, and emergency barge retrieval systems. The Coast Guard was admonished for still not having issued final rules establishing interim measures to reduce the risk of oil spills by single-

hull vessels until their mandatory phase-out under OPA (hereafter, final interim single-hull vessel spill prevention rules). These rules were required to be issued under OPA nearly five years ago.

The other set of issues that emerged during the hearings related to oil spill response. Many of the witnesses criticized the lack of coordination and expedition with which agencies acted in determining the scope and timing of closing and re-opening of fishing grounds after the North Cape spill. Fishermen and lobstermen injured by the spill found it difficult to secure short-term financial assistance under current law. Other witnesses questioned the availability of the $1 billion Fund for assessment and restoration of ecological resources injured as a result of the North Cape spill. Finally, concern was expressed about the need for better coordination in response activities among officials representing different geographic regions potentially affected by the spill.

CONGRESSIONAL LEGISLATION

On May 7, 1996, Senator Chafee, chairman of the committee, introduced S. 1730, the Oil Spill Prevention and Response Improvement Act. On June 4, the committee held a hearing on the bill.

On June 18, the committee began consideration of the bill. Two days later, on June 20, S. 1730 as amended was ordered reported by a vote of 17 to 0.

SUMMARY OF S. 1730

As amended and approved by the Committee on Environment and Public Works, the bill includes four titles. Title I includes measures to enhance oil spill prevention measures. Title II improves the response to the environmental and economic injuries from oil spills that will, inevitably, still occur. Title III clarifies the financial responsibility requirements for offshore facilities. Title IV makes several technical changes to OPA.

TITLE I—ENHANCING SPILL PREVENTION

Title I enhances oil spill prevention measures in several ways. It guarantees that measures establishing structural and operational spill prevention requirements for single-hull vessels, as well as a final towing safety rule, will be in effect by the end of calendar year 1996. It also provides an incentive for shippers to convert their fleets to double-hull vessels before the deadline established in OPA. Specifically, the bill includes the following changes to current law:

Coast Guard rules—If the Coast Guard fails to issue final interim single-hull vessel spill prevention rules by dates its witnesses testified it could meet (July 18, 1996, for operational measures and December 18, 1996, for structural measures), the bill triggers into effect automatically previously issued proposed rules containing such measures. The final interim rules the Coast Guard ultimately does issue are to include a requirement that applicable vessels have at least one of the following: (1) a crew member and operable anchor on board; (2) an emergency barge retrieval system on board; or (3) comparable safeguards to prevent grounding. The rules also must establish minimum under-keel clearance requirements for

single-hull vessels for each port and certain waters in which such vessels operate.

Incentive to convert to double-hull vessels—Operators of tank vessels equipped with double-hulls at the time of enactment of this Act or double-hull vessels converted from or replacing a single-hull vessel at least 5 years before the statutory deadline in OPA will be entitled to a lesser liability limit than provided by current law. Operators of such vessels will be liable for damages in excess of OPA's statutory liability cap only if they engage in gross negligence or willful misconduct.

Towing safety rule—The Coast Guard is required to issue a final towing safety rule by September 30, 1996. The final rule is to require: (1) an emergency fire suppression system or other fire protection equipment on board, (2) an on-board electronic position-fixing device, and (3) operator-conducted inspections of navigational and operational equipment at regular intervals.

Other prevention measures—The bill directs the following agencies to perform oil spill prevention studies: (1) the Secretary of Transportation, in coordination with the Marine Board, to study how the designation of waters and shipping lanes affects spill risks; and (2) the U.S. Army Corps of Engineers, to review the forthcoming report by the Governor of Rhode Island's task force on dredging. The bill also interposes a standard for lightering regulations required under current law that ensures the rules will provide for substantial environmental protection.

TITLE II—IMPROVING RESPONSE TO OIL SPILLS

Title II contains amendments that build upon the response measures provided in OPA. The principal purpose of the amendments is to reduce or redress the economic hardship and environmental damage caused by an oil spill. Title II includes the following specific changes to current law:

Short-term financial assistance—The bill clarifies current law to ensure that injured parties can pursue partial claims immediately following an oil spill without waiving their right to full compensation for future losses.

Fishing grounds—The National Oceanic and Atmospheric Administration (NOAA), in consultation with other affected state and Federal agencies, is required to develop a framework, including model protocols and standards, for the closing and re-opening of fishing grounds affected by an oil spill.

Natural resource damages—The recent Comptroller General's opinion that OPA does not provide for the Fund to pay costs of natural resource damage trustees arising from a damage assessment without a separate appropriation of Congress is overturned. The amount that may be disbursed from the Fund not subject to annual appropriation is raised from $50 million to $60 million.

Mitigation of ecological injury—The bill strengthens the environmental response provisions in current law. It ensures access to the Fund for the costs of mitigating ecological damage immediately following an oil spill and for the costs of plugging idle oil wells. It also directs the agencies to establish a national scientific support team and information clearinghouse to enhance responses to the environmental effects of oil spills.

Response plans—The bill strengthens the current law's requirements for compliance with applicable response plans in the event of a spill. It does so by providing that such plans be followed unless deviation would provide for a more expeditious or effective response to an oil spill or mitigation of its effects.

TITLE III—FINANCIAL RESPONSIBILITY

Title III amends the financial responsibility requirements of OPA for offshore facilities. First, it establishes $35 million as the amount of financial responsibility required for offshore facilities. The President may raise this amount (up to $150 million) if the President determines that any of the various risks posed by the facility justify doing so. Second, Title III clarifies that land-based fuel-receiving terminals and marinas are not offshore facilities for the purpose of the financial responsibility requirements in OPA.

TITLE IV—TECHNICAL AMENDMENTS

Title IV clarifies that OPA applies to the Trust Territory of the Pacific Islands and corrects other minor non-substantive errors inadvertently contained in OPA as passed.

SECTION-BY-SECTION ANALYSIS

TITLE I—ENHANCING SPILL PREVENTION

Section 101. Interim oil spill prevention measures for single-hull vessels

The Coast Guard is almost five years behind OPA's deadline for issuing final interim single-hull vessel spill prevention rules. This delay has undermined the purposes of subsection 4115(b) of OPA, which are to enhance safe operation of single-hull vessels and to better protect the marine environment pending their replacement with double-hull vessels as required by OPA.

Section 101 will ensure that such purposes are met by providing for the expeditious adoption of a series of rules to reduce the risk of an oil spill by single-hull tank vessels until such vessels are phased out under OPA. The section will ensure that certain of these rules, which OPA required to be issued by August 1991, are in effect by mid-July 1996 and the full complement no later than the end of the year.

The bill accomplishes this result by amending subsection 4115(b) of OPA to provide that, if the Secretary fails to issue final rules for single-hull vessels over 5,000 gross tons by certain dates, previously published proposed rules will go into effect automatically and apply until issuance of new final interim rules. In particular, if the Secretary does not issue and have in effect operational measures for single-hull vessels by July 18, 1996, a proposed rule for such measures published in 1995 will go into effect. Similarly, if the Secretary fails to promulgate a final structural rule for such single-hull vessels by December 18, 1996, the section provides that the proposed 1993 structural rule would go into effect.

A concern raised with respect to the proposed 1993 structural rule is that certain of its requirements actually might increase oil outflow in the event of a spill. Section 101 therefore gives the Sec-

retary the flexibility to forestall the effectiveness of any of the provisions of the 1993 proposed rule upon a finding that the provision would likely increase the risks of oil pollution. Any such finding(s) must be published in the Federal Register by the date the proposed rule otherwise would be triggered into effect.

Section 101 also requires the Secretary to include certain measures in the final interim single-hull vessel spill prevention rules. First, single-hull vessels must have at least one of the following: (1) a crew member and operable anchor on board; (2) an emergency barge retrieval system on board; or (3) comparable structural or operational measures to protect against grounding. Second, the Coast Guard is directed to establish an under-keel clearance with which single-hull vessels must comply for each local port or place of destination or the inland or coastal waterway through which the vessels pass. To ensure timely issuance of the rules, the provision gives the Coast Guard the discretion to include these requirements in the final structural rule to be issued in December 1996 if necessary.

Finally, Section 101 clarifies the standards under which the Coast Guard is to issue interim rules for single-hull vessels. This section clarifies that OPA requires adoption of not only those measures determined to be the most cost-effective, but of any that meet the relevant statutory criteria. Moreover, the Coast Guard is to give due consideration to human safety and measures that prevent collisions and groundings in addition to those which reduce oil outflow after a spill has commenced.

Section 102. Incentives for shippers to convert single-hull vessels to double-hull cessels

OPA contains limits on liability for dischargers of oil that vary depending upon the kind and size of the entity responsible for the spill. For example, the cap for a tank vessel of 3,000 gross tons or more is the greater of $10 million or $1,200 per gross ton. These limits do not apply if the discharge was was the result of either: (1) gross negligence or willful misconduct; or (2) violation of an applicable Federal safety, construction, or operating regulation.

Section 102 amends subsection 1004(c) of OPA as it applies to the liability of double-hull vessel operators. It does so by specifically limiting the circumstances under which OPA's liability cap can be exceeded. Under this bill, violation of a regulation will no longer be a basis for exceeding the statutory liability limits for any vessel that is equipped with a double hull at the time of enactment of this Act or that converts to a double hull at least five years before the conversion deadline in OPA.

Even as amended by this section, however, oil shippers that operate double-hull vessels will still be Federally liable under OPA for damages in excess of the statutory liability cap if their spill was caused by gross negligence or willful misconduct.

Double hulls play a key role in spill prevention. While requiring shippers to convert immediately to double hulls would decrease the risks of oil spills by tank vessels, it also would place an enormous financial burden on the oil transportation industry. This section avoids such a result by providing shippers with an inducement, rather than simply accelerating OPA's double-hull mandate.

Section 103. Prevention of oil spills by improvement of safety of towing vessels

Section 103 requires the Secretary to issue a final safety rule for towing vessels by September 30, 1996. If no final rule is issued by the deadline, the proposed rule the Coast Guard issued in 1995 will go into effect automatically unless and until a final rule is published. The final rule must require towing vessels to have on board: (1) a fire-suppression system or other fire protection equipment; and (2) an electronic position fixing device. The final rule also is to include a requirement ensuring that operators conduct tests and inspections of a vessel's navigation and operational equipment at regular intervals with the results to be entered into a log or similar record.

Section 104. Other oil prevention enhancement measures

Section 104 includes a series of prevention-related measures to address specific concerns raised after the North Cape spill. This section requires the Secretary, in cooperation with the Marine Board of the National Research Council, to study how the designation of waters and shipping lanes through which vessels transport oil affect the risks of an oil spill.

Section 104 directs the U.S. Army Corps of Engineers (Corps) to review a forthcoming report of the Rhode Island Governor's task force on the dredging of the State's waterways. It further directs the Corps to submit to Congress within 120 days of this review recommendations regarding the feasibility and environmental effects of dredging.

Section 104 also provides a standard for regulations on lightering operations that are required under title 46 of the U.S. Code, as amended by subsection 4115(d) of OPA. Lightering involves the transfer of oil from one vessel to another.

Current law requires that lightering regulations be issued that address various factors, including prevention and response to oil spills, but does not expressly provide a standard such rules are to meet. The standard prescribed in Section 104 for such rules is the same one OPA established for the interim single-hull vessel spill prevention rules, which is to provide as substantial protection to the environment as is economically and technologically feasible. Use of this standard for lightering rules is appropriate not only because it has a precedent in OPA, but because lightering operations are expected to continue to increase, especially as more and more single-hull vessels are precluded from operating in U.S. waters over the next 20 years. The regulations also should clarify that the Captain of the local port has authority to oversee lightering activities, in particular as they may affect sensitive ecological resources.

TITLE II—IMPROVING RESPONSE TO OIL SPILLS

Section 201. Access to timely short-term financial assistance for persons injured by oil spills

Section 201 helps to ensure that immediate financial assistance is available and will be provided for those whose livelihoods are affected by an oil spill. In the context of the North Cape spill, some impacted fishermen and lobstermen were reluctant to pursue par-

tial claims for fear of waiving their right to full compensation. This reluctance led to significant hardship in certain situations because many of these self-employed claimants did not qualify for unemployment benefits.

Section 201 clarifies that subparagraph 1002(b)(2)(E) of OPA entitles a claimant injured by an oil spill to receive interim, partial damages without prejudicing the right to pursue a claim for other damages in the future. Subsection 1014(b) of OPA also is amended to require that a responsible party's advertisement setting forth claims procedures inform injured parties that they may present claims for interim, partial damages. The responsible party still may establish reasonable parameters within which claims for partial, interim damages may be presented to avoid undue transactions costs, consistent with avoiding financial hardship to injured parties.

Section 201 also clarifies that a claimant under OPA may present an unpaid claim for interim, partial damages to the Fund. Finally, this section amends subsection 1015(a) of OPA to make clear that subrogation applies only with respect to the portion of a claim reflected in a payment of interim, partial damages.

Section 202. Advance procedures for the closing and reopening of fishing grounds

Section 202 requires that the Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Director of the U.S. Fish and Wildlife Service and other affected state and Federal agencies, issue regulatory guidance, including model protocols and standards, for the closing and re-opening of fishing grounds. This section further requires that area contingency plans include area-specific protocols and standards.

Section 203. Access to oil spill liability trust fund for natural resource damages

Section 203 amends section 6002 of OPA to ensure that natural resource damage trustees have direct access to the Fund for the costs of the complete scope of their activities in assessing natural resource damages arising from an oil spill.

An October 1995 Comptroller General opinion interpreted OPA as precluding reimbursement from the Fund for costs associated with regular natural resource damage assessment activities as well as the development and implementation of restoration plans. The opinion determined that such costs are reimbursable only if provided for by congressional appropriation. The result of the opinion is that natural resource damage trustees have not had direct access to the Fund for their assessment work or for developing or implementing restoration plans without separate congressional appropriation.

The purpose of Section 203 is to overrule the Comptroller General's opinion to allow trustees to have direct access to the Fund for reimbursement of costs arising from natural resource damage assessment. To ensure that such payments do not undermine oil spill response, the section also raises the amount that may be dis-

bursed from the Fund without separate congressional appropriation from $50 million to $60 million. The committee will continue to examine the level of this increase to ensure that it reflects the approximate amount of what trustees need to carry out natural resource damage assessments.

Section 204. Access to necessary information, expertise, and funding to mitigate near-term ecological injury resulting from oil spill

Section 204 amends subsection 1012(a) of OPA to ensure access to the Fund for costs to mitigate or avoid ecological injury immediately following an oil spill. Such costs include those arising from management activities designed to ameliorate environmental effects of oil already spilled or spread in addition to those designed to protect resources from being subjected to oil in the first instance. Whether costs meet the standard of this section is within the discretion of the Federal On-Scene Coordinator. Allowing the Fund to be used to mitigate ecological damage during the critical time period immediately following a spill will minimize the long-term injury to the environment and correspondingly reduce natural resource damages.

Section 204 also provides access to the Fund for up to half of the costs of plugging an idle oil well under a cost-sharing agreement with the State. It is estimated that the nation has approximately 215,000 idle oil wells on non-Federal lands, some of which pose substantial safety or environmental risks. This section will allow these wells to be plugged to alleviate such risks so long as the State in which the well is located contributes at least 50 percent of the necessary costs.

Section 204 requires that area contingency plans include a list of local scientists with expertise in the environmental effects of oil spills. In addition, it amends subsection 4202(b) of OPA to require the Under Secretary of Commerce for Oceans and Atmosphere to establish a national scientific support team to assist oil spill response teams. Finally, this section amends section 7001 of OPA to establish a national clearinghouse of information on the environmental effects of oil spills and on how best to mitigate the effects of various kinds of spills.

Section 205. Compliance with response plans

Section 205 requires compliance with response plans unless the President or the Federal On-Scene Coordinator determines that deviation from the plans would result in a faster response, a more effective response, or a response that would better mitigate environmental effects than would strict adherence to the plans.

TITLE III—TAILORING OF OFFSHORE FACILITY FINANCIAL RESPONSIBILITY REQUIREMENTS TO OIL SPILL RISKS

Section 301. Tailoring of offshore facility financial responsibility requirements to oil spill risks

OPA requires offshore oil-related facilities to demonstrate evidence of access to resources sufficient to cover the likely costs of clean-up and damages arising from an oil spill. This requirement is satisfied by a facility's obtaining a Certificate of Financial Re-

sponsibility under OPA. In this way, OPA ensures that the discharger of oil—not United States taxpayers —bears the primary financial burden resulting from a spill.

Section 301 makes the financial responsibility requirements for offshore facilities consistent with the original intent of Congress. It will ensure that undue and unintended economic burdens are avoided but will retain OPA's important environmental purposes.

In particular, Section 301 of the reported bill modifies the financial responsibility requirements of OPA in three ways.

First, it corrects an overly broad interpretation of OPA by the Department of the Interior. That interpretation would apply the financial responsibility requirements for offshore facilities to traditional onshore facilities such as land-based oil terminals and marinas. Such facilities never were intended to be subject to OPA's offshore financial responsibility requirements, even if they have certain appurtenances that extend onto submerged land. This title makes clear OPA's original intent.

Second, Section 301 exempts from financial responsibility requirements small offshore operators who, even under a worst-case scenario, lack the capacity to cause a major oil spill. This de minimis exemption removes the potential for imposing an unjustifiably heavy financial burden on small businesses that pose only minimal environmental risk. The section does not affect the liability of a facility that discharges oil. The President also retains the discretion to require a small offshore facility to demonstrate evidence of financial responsibility if the risk justifies doing so.

Third, Section 301 allows an offshore facility's financial responsibility requirements to be tailored to the actual oil spill risks posed by the facility. OPA currently directs the promulgation of regulations that would require all offshore facilities to meet financial responsibility requirements at a $150 million level. Section 301 instead applies the current $35 million requirement in the Outer Continental Shelf Lands Act for facilities in Federal waters but give the President discretion to increase the requirement on the basis of risk. A similar approach is taken with respect to offshore facilities in State waters, except that the minimum financial responsibility requirement is $10 million in light of the fact that many coastal States impose their own such requirements.

In sum, Title III removes the potential for unnecessary and inefficient economic burdens yet preserves OPA's fundamental purpose of ensuring that oil-spill polluters pay for the effects of their pollution. It also retains OPA's important safeguards and deterrents against oil pollution in the first instance.

TITLE IV—TECHNICAL AMENDMENTS

Section 401. Miscellaneous technical amendments

Section 401 amends the scope of OPA to include the Trust Territory of the Pacific Islands and corrects other minor non-substantive errors inadvertently contained in OPA as passed.

HEARINGS

The Committee on Environment and Public Works held two oversight hearings on the effectiveness of Federal oil pollution legisla-

tion. In addition to the oversight hearings, the committee held a legislative hearing on S. 1730.

The first hearing was held on February 14, 1996 in Narragansett, RI, near the site of the North Cape spill. The purpose of the field hearing was to use the experience of the North Cape spill to assess the adequacy of Federal oil pollution laws to prevent and respond to spills. Testimony was given by: Governor Lincoln Almond of Rhode Island; Vice Admiral Arthur E. Henn, Vice Commandant, U.S. Coast Guard; John Bullard, Director of Intergovernmental Affairs and Sustainable Development, Department of Commerce/ NOAA; Dr. Phillip A. Singerman, Assistant Secretary of Commerce for Economic Development; Captain P. ("Barney") Turlo, Federal On-Scene Coordinator, North Cape spill, East Providence, RI; Charles Hebert, National Wildlife Refuge Manager, U.S. Fish and Wildlife Service, Charlestown, RI; Douglas A. Eklof, Vice President, Eklof Marine, Staten Island, NY; Anne Considine, Director of Marketing and Tourism, South County Council on Tourism, Wakefield, RI; Jim O'Malley, Executive Director, East Coast Fisheries Foundation, Narragansett, RI; Brian Turnbaugh, Inshore fisherman, Wakefield, RI; Robert Smith, President, Rhode Island Lobstermen's Association, Charlestown, RI; Curt Spalding, Executive Director, Save the Bay, Providence, RI; Dennis Nixon, Professor, Department of Marine Affairs, University of Rhode Island, Kingston, RI.

The second hearing was held on March 27, 1996 in Washington, D.C. The purpose of the hearing was to consider possible Federal legislative reforms to improve prevention of, and response to, oil spills in light of the North Cape spill. Testimony was given by: Rear Admiral James C. Card, Chief of Marine Safety for the U.S. Coast Guard; Daniel Sheehan, Director of the National Pollution Funds Center; Douglas K. Hall, Assistant Secretary of Commerce for Oceans and Atmosphere; Timothy R.E. Keeney, Director, Rhode Island Department of Environmental Management, Providence, R.I.; Thomas A. Allegretti, President, American Waterways Operators, Arlington, VA; George Blake, Executive Vice President, Maritime Overseas Corporation, New York, NY; Sally Ann Lentz, Co-Director and General Counsel, Ocean Advocates, Columbia, MD; Barry Hartman, Counsel, Rhode Island Lobstermen's Association; Richard Hobbie, President, Water Quality Insurance Syndicate; Mark Miller, President, National Response Corporation, Calverton, NY; and Bill Gordon, Professor of Marine Affairs, University of Rhode Island, Kingston, RI.

The third hearing was held on June 4, 1996, to consider S. 1730, the Oil Spill Response and Improvement Act. Testimony was given by: Rear Admiral James C. Card, Chief of Marine Safety for the U.S. Coast Guard; Douglas K. Hall, Assistant Secretary of Commerce for Oceans and Atmosphere; Sidney Holbrook, Commissioner, Connecticut Department of Environmental Protection, Hartford, CT; John Torgan, Narragansett Baykeeper for Save the Bay, Providence, RI; Richard Hobbie, President, Water Quality Insurance Syndicate; Thomas A. Allegretti, President, American Waterways Operators, Arlington, VA; Richard DuMoulin, Chairman and CEO, Marine Transport Lines, for Intertanko, Secaucus, NJ; George Savastano, Director of Public Works, Ocean City, NJ; and

Douglas C. Wolcott, Chair, Committee on OPA Implementation Review for the Marine Board of the National Research Council.

REGULATORY IMPACT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill.

Using the extant Oil Pollution Act of 1990 (OPA) as a baseline, which S. 1730 amends, the marginal regulatory impact of the reported bill is expected to be minimal.

First, one of the most important provisions of the reported bill is completely incentive-based and non-regulatory in nature. This provision is Section 102, which narrows the conditions under which an oil shipper who converts to a double-hull vessel well in advance of the statutory deadline will face liability above the statutory cap. As such, the provision is voluntary in nature and imposes no new regulatory requirements. The Coast Guard already has issued a rule establishing standards for double hulls under OPA.

Second, the balance of the regulatory provisions in the reported bill are structured to fit within the existing statutory and regulatory framework established in OPA. They do so by: (A) providing for the application of safety and environmental regulatory measures to satisfy long-overdue rulemaking requirements; (B) setting forth measures the Coast Guard is to include in its issuance of final rules to the greatest extent practicable consistent with relevant statutory criteria; (C) clarifying standards originally prescribed in OPA; (D) making minor substantive changes in implementation of various provisions or operation of already existing regulatory entities; or (E) making minor technical corrections to the statute. A breakdown of the provisions by the foregoing categories follows.

Encompassed within subcategory (A) are: (1) Subsection 101(a), which will ensure that final oil-spill prevention rules for single-hull oil-carrying vessels, including both operational and structural measures as appropriate, will be in effect by the end of calendar year 1996; and (2) Subsection 103(a), which will ensure that a final rule on navigation safety equipment for towing vessels will be in effect by the end of fiscal year 1996.

Although these sections involve the issuance of new regulatory requirements, their incremental regulatory impact should be minimal. The Coast Guard already has issued each of the various rules at issue in proposed form. In addition, with respect to ensuring that final rules for single-hull tank vessels are in effect by certain deadlines, OPA already contains a requirement mandating their issuance. Therefore, S. 1730 adds no new regulatory burden with respect to such rules.

Encompassed within subcategory (B) are: (1) the first portion of subsection 101(b), which directs the Coast Guard to include certain measures in its final rules on interim measures to reduce oil spills from single-hull vessels; and (2) subsection 103(b), which directs the Coast Guard to include certain other measures in its final rule on navigation safety equipment for towing vessels.

The regulatory impact of these subsections should be relatively minimal for the following reasons. First, most of the measures re-

quired to be included are already part of the applicable proposed rules in one form or another. Second, the measure not in the proposed single-hull rules is crafted flexibly to allow compliance by one of several means, while the measure not in the proposed towing-vessel rule relates to equipment (fire-suppression system) that most towing vessels reasonably can be expected to have already. Finally, the measures are to be incorporated into already ongoing rulemaking processes.

Encompassed within subcategory (C) are: (1) the second portion of subsection 101(b), which clarifies the standard under which the Coast Guard is to issue single-hull spill prevention rules in accordance with subsection 4115(b) of OPA; and (2) Section 201, which clarifies that persons injured by an oil spill are entitled to interim, short-term damages under OPA. These provisions simply clarify existing provisions in OPA, and thus, their regulatory impact is expected to be negligible.

Encompassed within subcategory (D) are (1) subsection 104(c), which applies the standard for the single-hull spill prevention rules to the rulemaking for lightering operations already required of the Coast Guard; (2) Section 203, which makes the Fund available for natural resource damage assessments under OPA without the need for a separate appropriation of Congress; (3) subsection 204(a), which expands the purposes for which the Fund may be used to include costs necessary to avoid imminent ecological injury and the plugging of idle oil wells; (4) Section 205, which modifies the standard under which deviation from response plans may occur; and (5) Title III, which clarifies the financial responsibility requirements for offshore facilities.

Each of these provisions reflects a change in operation of instrumentalities already in existence under OPA. Thus, their regulatory impact should be de minimis.

Encompassed in subcategory (E) is Section 401, which makes minor technical corrections to OPA.

The bill will not have any effect on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee makes the following evaluation of the Federal mandates contained in the reported bill.

S. 1730 imposes no Federal intergovernmental mandates on State, local, or tribal governments. All of its governmental directives are imposed on Federal agencies. The Coast Guard has estimated that a very small percentage of costs associated with the rules required to be issued under OPA, as amended by this bill, may fall upon non-Federal governmental entities.

The bill does not directly impose any Federal Private Sector mandates either, although some of its provisions may ultimately result in duties or costs being imposed on the private sector.

In particular, as described above in the Regulatory Impact analysis, sections 101 or 102 could trigger into effect proposed rules that would place enforceable duties on the private sector. The Coast Guard has made estimates, summarized below, of the economic impact of these proposed rules. Any long-term effects of such a sce-

nario are highly speculative because the reported bill would make the proposed rules effective only until the Coast Guard issues a final rule on the requisite measures at hand.

With respect to the proposed operational rule for single-hull vessels, the Coast Guard estimated that it would affect approximately 1359 single-hull oil-carrying tank vessels that were operating on U.S. navigable waters as of the date of the rule's issuance (November 1995). It was estimated that first-year compliance with the proposed rule would cost the affected industry about $183.8 million in the aggregate, with annual costs projected to trend dramatically downward after the first year and eventually level off over time.

With respect to the proposed structural rule for single-hull vessels, the Coast Guard estimated its annual cost in the early years of application to peak at around $164 million. Per-vessel cost was estimated to range from around $40,000 to $380,000, a range which the Coast Guard found was within the owner's capital investment in a majority of cases.

There are approximately 196 U.S. tankships and 86 U.S. tank barges of over 5,000 gross tons that carry oil in bulk and, thus, that would be affected by the proposed single-hull interim rules. Of these, 16 tank vessels and 32 tank barges are owned by small businesses. The Coast Guard has determined that neither of the proposed rules would have a significant economic impact on a substantial number of small entities.

With respect to the proposed navigation safety rule for towing vessels, it would apply to towing vessels 8 meters (26.25 feet) or more in length operating on navigable U.S. waters subject to a few exceptions. The Coast Guard estimated the maximum present-value costs the proposed rule would impose on affected towing operators to be around $31.5 million in the aggregate. The Coast Guard also determined that the proposed towing-vessel rules would not result in a significant economic impact on a substantial number of small entities.

S. 1730 also directs the Coast Guard to include certain measures in the various ongoing rulemakings. The direct costs of these measures on the private sector should not be significant. First, many of the vessels that will be regulated under such rules already satisfy such measures (for example, the measure requiring towing vessels to have a fire-suppression system). Second, the requisite measure that could impose the greatest costs on the private sector, designed to prevent groundings of tank barges, is crafted flexibly so that barge operators may comply by one of several means. Finally, the bill requires inclusion of particular measures only to the extent they meet the statutory criteria of OPA. One such criterion, in subsection 4115(b), is that such rules are to provide as substantial protection to the environment as is economically and technologically feasible. The feasibility "sideboard" will help to avoid excessive financial impacts on the regulated industry.

Section 201, which clarifies that persons injured by an oil spill are entitled to interim, short-term damages under OPA, also could result in somewhat greater costs in the processing of claims by a responsible party or its guarantor. The incremental increase of such costs should be de minimis, however, given that the section simply clarifies the intent of OPA in this regard. This conclusion

is supported by the testimony of a principal guarantor that the current practice generally is to allow injured parties to file claims for partial, interim damages. Finally, the report makes clear that reasonable parameters may be set within which claims for partial, interim damages may be presented to avoid undue transactions costs, consistent with avoiding financial hardship to injured parties.

A word also is in order with respect to Section 301, which modifies the financial responsibility requirements for offshore facilities under OPA. Given that OPA already contains such a requirement, section 301 contains no new mandate. The immediate effect of this provision on the regulated industry will be to lessen economic impacts because of the reduced amount of financial responsibility required for most regulated facilities.

Most of the costs discussed above will result from measures that will help to prevent oil spills in the first instance or reduce their impacts when they do occur. As such, the measures obviously will better help to protect environmental resources. But they also will result in long-term financial savings, both to persons in areas that will be spared oil spills and to the regulated industry as it will be able to avoid the sizable liability that often results from a spill. Testimony received by the committee demonstrated that an oil spill is especially illustrative of the principle that a healthy environment is a necessary prerequisite for a healthy economy. Fishermen, lobstermen, those involved in the tourist industry, and scores of others who rely on the marine environment experienced substantial financial losses as a result of the North Cape spill.

The other private-sector costs may arise from measures that will ensure that parties and communities injured by a spill are expeditiously and effectively compensated. As discussed above, any such costs to the responsible party are expected to be negligible and the benefits to injured parties in need of financial assistance may well be significant.

Thus, the financial and environmental benefits of the measures in S. 1730 far outweigh any costs they may impose.

The reported bill will have no discernable effect on the competitive balance between the public and private sectors. The public sector is not involved in the private-sector activities addressed in the bill.

ROLLCALL VOTES

On June 18, 1996 and on June 20, 1996, the committee met to consider S. 1730, and on June 20, voted to report the bill, as amended, by a rollcall vote of 17 in favor and 0 opposed, with Senator Inhofe voting present. Voting in favor were Senators Chafee, Warner, Smith, Faircloth, Kempthorne, Thomas, McConnell, Bond, Bennett, Baucus, Moynihan, Lautenberg, Reid, Graham, Lieberman, Boxer, and Wyden.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Act requires that a statement of the cost of a reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 26, 1996.

Hon. JOHN H. CHAFEE,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1730, the Oil Spill Prevention and Response Improvement Act.

Enactment of S. 1730 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the legislation.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES BLUM
(For June E. O'Neill).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1730.

2. Bill title: Oil Spill Prevention and Response Improvement Act.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works on June 20, 1996.

4. Bill purpose: S. 1730 would amend the Oil Pollution Act of 1990 (OPA) and other environmental statutes to:

Provide for interim rules and additional requirements for single-hull oil tankers;

Clarify existing law regarding the ability of persons harmed by oil spills to recover short-term as well as long-term damages from those responsible for such spills and from the Oil Spill Liability Trust Fund (OSLTF);

Add new activities to the current list of authorized uses of the OSLTF and make additional funds available without appropriation for these and other uses; and

Require the U.S. Coast Guard, the National Oceanic and Atmospheric Administration (NOAA), and other Federal agencies to collect and disseminate information on spills, their environmental impacts, and other related issues, and to perform certain studies, prepare reports, and carry out certain other activities.

5. Estimated cost to the Federal Government: CBO estimates that enacting S. 1730 would increase Federal outlays from direct spending authority by $40 million in fiscal year 1997 and $45 million a year thereafter. The effects of the bill are summarized in the following table.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING							
Spending Under Current Law:							
Estimated Budget Authority	50	50	50	50	50	50	50
Estimated Outlays	36	20	15	15	15	15	15
Proposed changes:							
Estimated Budget Authority	.....	10	10	10	10	10	10
Estimated Outlays	.....	40	45	45	45	45	45

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING							
Spending Under S. 1730:							
Estimated Budget Authority	50	60	60	60	60	60	60
Estimated Outlays	36	60	60	60	60	60	60

Enacting S. 1730 also could allow for slightly lower appropriations because some of the increase in direct spending might be used for damage assessments that would be ended with appropriations under current law.

The costs of this bill fall within budget function 300.

6. Basis of estimate: Section 203 of S. 1730 would create new budget authority and outlays by raising the annual cap on spending from the OSLTF that is not subject to appropriation and by expanding the types of activities for which these funds may be used. Currently, OPA authorizes the President to make available without appropriation up to $50 million from the OSLTF for the costs of cleaning up oil spills and initiating assessments of damages to natural resources. The $50 million in budget authority and any associated outlays are recorded in a separate account of the OSLTF known as the emergency fund. S. 1730 would raise the annual cap on amounts made available without appropriation from the emergency fund to $60 million. In addition, the bill would allow the $60 million to be used for more types of activities than under current law, which would increase the amount spent from the emergency fund from its expected level of $15 million to $20 million a year (based on current CBO projections).

Assessments of damage to natural resources.—Under current law, only preliminary costs of initiating damage assessments immediately following a spill can be paid from the emergency fund. In any given year, such preassessment costs are a minor part of spending from the OSLTF. The bulk of assessment costs must be either financed by the party that caused an oil spill—through negotiations with the trustee of the natural resources (usually a Federal, State, or tribal agency)—or appropriated from the general fund of the U.S. Treasury. In recent years, such appropriations have ranged from $4 million (for 1996) to $7 million (in 1994 and in 1995). While spending for damage assessments varies each year depending on the number of spills and the availability of private funding, it is likely that freeing such spending from the appropriations process would result in additional mandatory outlays from the OSLTF.

New uses of the OSLTF.—Under current law, the vast majority of amounts spent each year from the emergency fund are used for removal activities as defined by section 311 of the Federal Water Pollution and Control Act. While such outlays typically are far less than the authorized level of $50 million, they can vary widely from year to year, depending on the number of spills and other factors. In recent years, spending has been as low as $10 million (in 1993) and as high as $82 million (in 1994). S. 1730 would add new activities to the list of authorized uses of the OSLTF, two of which apparently would be considered removal costs under the bill's broader definitions and lower risk standards. As a result, more of the

amounts made available from the emergency fund would be spent than is currently the case. The new removal costs that would probably be eligible for emergency funds include: (1) one-half of the cost of plugging idle oil wells under cost-sharing agreements with the States in which they are located, which is currently done only to prevent an imminent spill, and (2) expenses associated with mitigating or avoiding ecological injuries immediately after a spill (including the costs of managing such activities), which are currently limited to containment efforts.

In any given year, the mix of activities would be determined by factors such as the number and severity of new spills and the number of applications received from States for well-capping projects. Other provisions. of S. 1730 would have no significant impact on Federal spending.

For purposes of this estimate, CBO assumes that S. 1730 would be enacted by the beginning of fiscal year 1997. Estimates of new direct spending are based on information provided by the Office of Management and Budget and the Coast Guard. In particular, we estimate that the bill would broaden the authority for using the OSLTF emergency funds so that the entire amount of $60 million would likely be spent each year.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting S. 1730 would increase direct spending; therefore, pay-as-you-go procedures would apply to the bill. The increase in direct spending is shown in the following table.

[By fiscal year in millions of dollars]

	1996	1997	1998
Changes in outlays	0	40	45
Changes in receipts	(1)	(1)	(1)

[1] Not applicable.

8. Estimated impact on State, local, and tribal governments: CBO's estimate of the impact of S. 1730 on State, local, and tribal governments will be provided separately.

9. Estimated impact on the private sector: CBO's estimate of the impact of S. 1730 on the private sector will be provided separately.

10. Previous CBO estimate: None.

11. Estimate prepared by: Deborah Reis.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATOR INHOFE

I support the theory behind and the implementation of the Oil Pollution Act of 1990. Not only is it important to have spill prevention efforts in place, it is also imperative to have workable, effective response guidelines in the unfortunate event of a spill. As a member of the House Public Works and Transportation Committee during OPA's inception, I attained a strong understanding of its provisions and I support reasonable measures that improve upon the prevention of, as well as the timely response to, petroleum-related accidents.

S. 1730 was introduced as a result of the January 1996 barge oil spill off the southern coast of Rhode Island. It is an honorable attempt to improve upon some of the perceived difficulties with the current implementation of OPA '90 that the North Cape spill shed light on. However, it is my belief that two areas need further consideration: non-use values assessment for natural resource damages as well as the financial requirements for offshore facilities.

Natural resource damages

A final rule published in January 1996 by the National Oceanic and Atmospheric Administration ("NOAA") has been challenged in the U.S. Court of Appeals by a broad section of commercial and maritime interests. The rule threatens the ability of responsible parties to pay for legitimate claims for oil spill damage by inviting speculative, inflative claims as assessed under what are called "non-use" values. The NOAA rule on natural resource damage assessment (NRDA) allows trustees to exercise unfettered discretion to select scientifically suspect methodologies for calculating these damages. By interjecting "non-use" values into the cleanup assessment equation, we are feeding into an arbitrary process that does not add to the cleanup of the site.

Financial responsibility for offshore facilities

Some of the provisions included in S. 1730 regarding Certificated of Financial Responsibility for offshore facilities improve upon the current implementation of OPA '90. However, some areas need to be addressed further, and I would like to make reference to a couple that need attention:

We need to review and establish firm geographic boundary delineating those offshore facilities that must obtain oil pollution insurance and apply only to facilities on the outer continental shelf.

Direct action as required currently by OPA '90 may severely limit the availability of oil pollution insurance for offshore production facilities. We need to look at who should reasonably be financially responsible in the event of a spill.

In addition to the lowering of the financial responsibility requirement to $35 million, we need to require an assessment based on

clear and convincing evidence by the President or the Secretary of the Interior of the risks posed by a particular facility.

Conclusion

The Chairman of the Environment and Public Works Committee has agreed to work on these issues as S. 1730 approaches the floor and I look forward to working with Senator Chafee as we move through the legislative process.

SENATOR JAMES M. INHOFE.

ADDITIONAL VIEWS OF SENATOR LAUTENBERG

The Oil Spill Prevention and Improvement Act is a positive step that will help prevent oil spills and improve our response to spills when they occur.

It is important that we establish strong rules to ensure that vessels are constructed and operated in a safe manner. These rules should have been adopted a long time ago.

It is also important to create incentives for shippers to shift their fleets to vessels with double-hulls, which substantially reduce the risks of oil spills.

However, I am concerned about section 102 of the bill, which would limit the liability of ship owners who convert their ships to double hull vessels at least five years before they are required to do so.

Under present law, ships over 5,000 gross tons can be held liable for oil spill damages of up to $10 million. However, this $10 million cap does not apply if a shipper violates applicable safety, construction or operating requirements. Shipowners and insurers have argued that this exception is very broad, and effectively subjects shippers to unlimited liability for oil spills based on a shipper's simple negligence.

As originally drafted for the hearings on oil spills, the Oil Spill Prevention and Improvement Act did not modify this liability scheme. However, section 102 of the committee-reported bill would substantially limit the liability of shippers who convert their ships to double hulls at least five years earlier than required. Under this provision, the $10 million liability cap would be waived only in the case of gross negligence or willful misconduct.

This provision has been criticized from two sides. Some shippers argue that giving special preferences for only some double hulled ships is unfair to those who purchased equally safe identical vessels that were not conversions. These shippers argue that all double hulled ships should benefit from the bill's broader liability cap.

Others argue that the threat of unlimited liability creates an important incentive for the safe handling of cargo, an incentive that has worked in practice. Because of this threat, many shippers have improved training of their crews, and have adopted an aggressive, pro-safety attitude that is largely responsible for a reduction in spills since 1990.

The value of strong liability laws in promoting safety was highlighted in an article that appeared in the Washington Post on June 23 of this year, a few days after markup of the legislation. In that article, Gerhard Kurz, President of Mobil's shipping subsidiary, emphasized the importance in maintaining safe operations in light of the potentially huge liability costs associated with a spill. As Mr. Kurz stated, "With the liability exposure, an owner would be foolish to send anything but his best ships here."

Another major oil shipper cited in the article, Chevron, also noted the importance of ensuring safe operations given the unlimited liability of shippers under the state laws of Pacific Coast states.

Clearly, liability exposure is not the only factor that encourages safe operations. However, it is critically important, and we need to be careful when making changes in this area. As noted in the Washington Post article, the oil shipping industry is increasingly dominated by independent shippers, many with a questionable commitment to safety. The article noted that Mobil rejects about 25 percent of the ships that it considers for possible chartering, with some of them "in pretty bad shape."

Double hulls can prevent many accidents from leading to oil spills, and I share the goals of the bill's sponsors to encourage prompt conversion to double hulled ships. Mobil estimates in 75 percent to 80 percent of groundings and collisions, the most frequent causes of marine oils spills, double hulls would prevent a spill. At the same time, many accidents involving double hulled ships still can lead to major oil spills, especially if crews do not respond expeditiously and efficiently.

I therefore am hopeful that we can further explore the merits of section 102 before this legislation reaches the Senate floor. It is worth considering further whether we can create additional incentives for conversion to double hulls in a manner that does not create inequities between shippers, and that does not weaken important safety incentives.

SENATOR FRANK R. LAUTENBERG.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

Public Law 101–380, 101st Congress

AN ACT. To establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Oil Pollution Act of 1990".

* * * * * * *

SEC. 1001. DEFINITIONS.

For the purpose of this Act, the term—

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistable character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

* * * * * * *

(36) "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States; and *the Trust Territory of the Pacific Islands,*

* * * * * * *

SEC. 1002. ELEMENTS OF LIABILITY.

(a) IN GENERAL.—* * *

* * * * * * *

(b) COVERED REMOVAL COSTS AND DAMAGES.—

(1) REMOVAL COSTS.—The removal costs referred to in subsection (a) are—

(A) * * *

* * * * * * *

(E) PROFITS AND EARNING CAPACITY.—Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable

by any claimant[.], *in part or in full. Payment or settlement of a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled under this subparagraph shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim.*

* * * * * * *

SEC. 1004. LIMITS ON LIABILITY.

(a) GENERAL RULE.— * * *

* * * * * * *

(c) EXCEPTIONS.—

(1) ACTS OF RESPONSIBLE PARTY.—[Subsection (a)] *Except as provided in paragraph (4), subsection (a)* does not apply if the incident was proximately caused by—

(A) gross negligence or willful misconduct of, or

(B) the violation of an applicable Federal safety, construction, or operating regulation by,

the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail).

(2) FAILURE OR REFUSAL OF RESPONSIBLE PARTY.—Subsection (a) does not apply if the responsible party fails or refuses—

(A) to report the incident as required by law and the responsible party knows or has reason to know of the incident;

(B) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(C) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

(3) OCS FACILITY OR VESSEL.—Notwithstanding the limitations established under subsection (a) and the defenses of section 1003, all removal costs incurred by the United States Government or any State or local official or agency in connection with a discharge or substantial threat of a discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel.

(4) DOUBLE-HULL VESSELS.—The exception in paragraph (1)(B) shall not apply—

(A) to a tank vessel that, as of the date of enactment of this paragraph, is equipped with a double hull along the entire length of the vessel, including fuel oil tanks; or

(B) to a vessel that is equipped with a double hull along the entire length of the vessel, including fuel oil tanks, and that is replacing another tank vessel not equipped with a double hull that is being retired at least 5 years prior to the

applicable retirement date under section 3703a(c) of title 46, United States Code.

* * * * * * *

SEC. 1012. USES OF THE FUND.

(a) USES GENERALLY.—The Fund shall be available to the President for—

(1) * * *

* * * * * * *

(5) the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act (including, but not limited to, sections 1004(d)(2), 1006(e), 4107, 4110, 4111, 4112, 4117, 5006, 8103, and title VII) and subsections (b), (c), (d), (j), and (l) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, with respect to prevention, removal, and enforcement related to oil discharges, provided that—

(A) not more than $25,000,000 in each fiscal year shall be available to the Secretary for operating expenses incurred by the Coast Guard;

(B) not more than $30,000,000 each year through the end of fiscal year 1992 shall be available to establish the National Response System under section 311(j) of the Federal Water Pollution Control Act, as amended by this Act, including the purchase and prepositioning of oil spill removal equipment; and

(C) not more than $27,250,000 in each fiscal year shall be available to carry out title VII of this Act.

(6) the payment of costs to mitigate or avoid ecological injury in the immediate aftermath of a spill (including costs of management activities at a level and of a type necessary for such a purpose, as determined solely by the Federal On-Scene Coordinator); and

(7) the plugging of idle oil wells that pose a substantial safety or environmental risk under a cost-sharing agreement with the State in which such a well is located, under which agreement the State maintains legal and operational responsibility for the plugging and pays a minimum of 50 percent of the necessary costs.

* * * * * * *

(e) REGULATIONS.—The President shall—

(1) not later than 6 months after the date of the enactment of this Act, publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under [this subsection] *subsection (d)* shall be exercised; and

* * * * * * *

SEC. 1013. CLAIMS PROCEDURE.

(a) PRESENTATION.—* * *

* * * * * * *

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with this section and full and adequate compensation is unavailable, *including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled,* a claim for the uncompensated damages and removal costs may be presented to the Fund.

* * * * * * *

SEC. 1014. DESIGNATION OF SOURCE AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—* * *

(b) ADVERTISEMENT BY RESPONSIBLE PARTY OR GUARANTOR.—[If a responsible party] *(1) IN GENERAL.—If a responsible party* or guarantor fails to inform the President, within 5 days after receiving notification of a designation under subsection (a), of the party's or the guarantor's denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented, in accordance with regulations promulgated by the President. Advertisement under the preceding sentence shall begin no later than 15 days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the President shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than 30 days.

(2) CLAIM FOR INTERIM DAMAGES.—An advertisement under paragraph (1) shall state that a claimant may present a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled and payment of such a claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

* * * * * * *

SEC. 1015. SUBROGATION.

(a) IN GENERAL.—Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law.

(b) INTERIM DAMAGES.—

(1) IN GENERAL.—If a responsible party, a guarantor, or the Fund has made payment to a claimant for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, subrogation under subsection (a) shall apply only with respect to the portion of the claim reflected in the paid interim claim.

(2) FINAL DAMAGES.—Payment of such a claim shall not foreclose claimant's right to recovery of all damages to which a claimant otherwise is entitled under this title or any other law.

[(b)] *(c)* ACTIONS ON BEHALF OF FUND.—At the request of the Secretary, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and all costs incurred by the Fund by reason of the claim, including interest (including prejudg-

ment interest), administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any responsible party or (subject to section 1016) guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

SEC. 1016. FINANCIAL RESPONSIBILITY

(a) REQUIREMENT.— * * *

* * * * * * *

(c) OFFSHORE FACILITIES.—

[(1) IN GENERAL.—Except as provided in paragraph (2), each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility of $150,000,000 to meet the amount of liability to which the responsible party could be subjected under section 1004(a) in a case in which the responsible party would be entitled to limit liability under that section. In a case in which a person is the responsible party for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the facility having the greatest maximum liability.]

(1) IN GENERAL.—

(A) EVIDENCE OF FINANCIAL RESPONSIBILITY REQUIRED.—Except as provided in paragraph (2), a responsible party with respect to an offshore facility that—

(i)(I) is located seaward of the line of ordinary low water along the portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters; or

(II) is located in inland waters, such as coastal bays or estuaries, seaward of the line of ordinary low water along the portion of the coast that is not in direct contact with the open sea;

(ii) is used for exploring for, drilling for, or producing oil, or for transporting oil from facilities engaged in oil exploration, drilling, or production; and

(iii) has a worst-case oil spill discharge potential of more than 1,000 barrels of oil (or a lesser amount if the President determines that the risks posed by the facility justify it),

shall establish and maintain evidence of financial responsibility in the amount required under subparagraph (B) or (C), as applicable.

(B) AMOUNT REQUIRED GENERALLY.—Except as provided in subparagraph (C), the amount of financial responsibility for an offshore facility described in subparagraph (A) is—

(i) $35,000,000, in the case of an off-shore facility located seaward of the seaward boundary of a State; or

(ii)$10,000,000, in the case of an off-shore facility located landward of the seaward boundary of a State.

(C) GREATER AMOUNT.—If the President determines that an amount of financial responsibility for a responsible party greater than the amount required by subparagraphs (B) and (D) is justified by the relative operational, environmental, human health, and other risks posed by the quantity or quality of oil that is explored for, drilled for, produced, stored, handled, transferred, processed or transported by the responsible party, the evidence of financial responsibility required shall be for an amount determined by the President not exceeding $150,000,000.

(D) MULTIPLE FACILITIES.—If a person is a responsible party for more than 1 facility subject to this subsection, evidence of financial responsibility need be established only to meet the amount applicable to the facility having the greater financial responsibility requirement under this subsection.

(E) STATE JURISDICTION.—The requirements of this paragraph shall not apply if any offshore facility located landward of the seaward boundary of a State is required by the State to establish and maintain evidence of financial responsibility in a manner comparable to, and in an amount equal to or greater than, the requirements of this paragraph.

(F) DEFINITION.—For the purpose of this paragraph, the seaward boundary of a State shall be determined in accordance with section 2(b) of the Submerged Lands Act (43 U.S.C. 1301(b)).

* * * * * * *

[(e)**]** *(d)* METHODS OF FINANCIAL RESPONSIBILITY.—Financial responsibility under this section may be established by any one, or by any combination of the following methods which the Secretary (in the case of a vessel) or the President (in the case of a facility) determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the Secretary or the President, as appropriate may specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility to effectuate the purposes of this Act.

[(f)**]** *(e)* CLAIMS AGAINST GUARANTOR.—Any claim for which liability may be established under section 1002 maybe asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under hat section for removal costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke (1) all rights and defenses which would be available to the responsible party under this Act, (2) any defense authorized under subsection (e), and (3) the defense that the incident was caused by the willful misconduct of the responsible party. The guarantor may not invoke any other

defense that might be available in proceedings brought by the responsible party against the guarantor.

[(g)] *(f)* LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility required under this Act which that guarantor has provided for a responsible party.

[(h)] *(g)* CONTINUATION OF REGULATIONS.—Any regulation relating to financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, is deemed and shall be construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by a new regulation issued under this section.

[(i)] *(h)* UNIFIED CERTIFICATE.—The Secretary may issue a single unified certificate of financial responsibility for purposes of this Act and any other law.

SEC. 4115. ESTABLISHMENT OF DOUBLE HULL REQUIREMENT FOR TANK VESSELS.

(a) DOUBLE HULL REQUIREMENT.—* * *

* * * * * * *

(b) RULEMAKING.—[The Secretary]

(1) IN GENERAL.—The Secretary shall, within 12 months after the date of the enactment of this Act, complete a rulemaking proceeding and issue a final rule to require that tank vessels over 5,000 gross tons affected by section 3703a of title 46, United States Code, as added by this section, comply until January 1, 2015, with structural and operational requirements that the Secretary determines will provide as substantial protection to the environment as is economically and technologically feasible.

(2) OPERATIONAL ELEMENTS.—If a final rule under this subsection with respect to operational elements does not become effective by the date that is 59 months after the date specified in paragraph (1), the proposed rule in the Supplemental Notice of Proposed Rulemaking (60 Fed. Reg. 55,904 (1995)) shall be considered to be in effect as a final rule as of that date and shall remain in effect until a final rule becomes effective.

(3) STRUCTURAL ELEMENTS.—If a final rule under this subsection with respect to structural elements does not become effective by the date that is 64 months after the date specified in paragraph (1), the proposed rule in the Notice of Proposed Rulemaking (58 Fed. Reg. 54,870 (1993)) shall be considered to be in effect as a final rule as of that date and shall remain in effect until a final rule becomes effective, except provision in the proposed rule with respect to which the Secretary may issue a finding on the record that the provision would be likely to increase the risks of oil pollution.

(4) PROVISIONS TO BE INCLUDED.—

(A) IN GENERAL.—In issuing rules under this subsection, the secretary shall include the following provisions to the

greatest extent practicable and consistent with relevant statutory criteria:

(i) A requirement that a single hull barge over 5,000 gross tons operating in open ocean or coastal waters that is affected by this section have at least 1 of the following:

(I) A crew member on board and an operable anchor.

(II) An emergency system on board the vessel towing the barge to retrieve the barge if the tow line ruptures.

(III) Adoption of any other measure that provides comparable protection against grounding of the barge as that provided by a measure described in subclause (I) or (II).

(ii) For each port in which any tank vessel not fitted with a double bottom that covers the entire cargo tank length operates, establishment of a minimum underkeel clearance for the vessel when entering the port or place of destination, when departing port, and when operating in an inland or coastal waterway.

(B) CONSIDERATIONS.—In issuing rules under this subsection, the Secretary shall—

(i) require the use of all measures that the Secretary finds meet the criteria of this section, not only those determined to be the most cost-effective or most cost-efficient;

(ii) take account of human safety, including the safety of crew members on affected tank vessels; and

(iii) consider measures that prevent collision or grounding of a tank vessel in addition to those that reduce oil outflow after such a collision or grounding has occurred.

(C) INCLUSION IN FINAL RULE.—If, in the discretion of the Secretary, the Secretary finds it necessary, the Secretary may include the provisions of subparagraph (A) in conjunction and simultaneously with the final rule with respect to structural elements referenced to paragraph (3).

SEC. 4202. NATIONAL PLANNING AND RESPONSE SYSTEM.

(a) IN GENERAL.— * * *

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(b) IMPLEMENTATION.—

(1) AREA COMMITTEES AND CONTINGENCY PLANS.— * * *

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(4) TANK VESSEL AND FACILITY RESPONSE PLANS; TRANSITION PROVISION; EFFECTIVE DATE OF PROHIBITION.—(A) Not later than 24 months after the date of the enactment of this Act, the President shall issue regulations for tank vessel and facility response plans under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act.

(B) During the period beginning 30 months after the date of the enactment of this paragraph and ending 36 months after that date of enactment, a tank vessel or facility for which a re-

sponse plan is required to be prepared under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, may not handle, store, or transport oil unless the owner or operator thereof has submitted such a plan to the President.

(C) Subparagraph (E) of section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, shall take effect 36 months after the date of the enactment of this Act.

(5) SCIENTIFIC SUPPORT TEAM.—

(A) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this paragraph, the Under Secretary of Commerce for Oceans and Atmosphere shall establish a process under which a scientific support team shall be named, all or part of which may be convened in response to an oil spill covered by this Act.

(B) PURPOSE.—The purpose of the scientific support team shall be to provide useful or necessary scientific information and support to the response team and to recommend any measures that will serve to mitigate ecological injury immediately following such a spill.

(C) OPERATIONS OPEN TO THE PUBLIC.—To the extent it does not interfere with its expeditious operation, the operations of a scientific team shall be open to the public

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SEC. 4303. FINANCIAL RESPONSIBILITY PENALTIES.

(a) ADMINISTRATIVE.—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 1016 or the regulations issued under that section, or with a denial or detention order issued under subsection ⟦(c)(2)⟧ *(b)(2)* of that section, shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation.

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SEC. 6002. ANNUAL APPROPRIATIONS.

(a) REQUIRED.—Except as provided in subsection (b), amounts in the Fund shall be available only as provided in annual appropriation Acts.

⟦(b) EXCEPTIONS.—Subsection(a) shall not apply to sections 1006(f), 1012(a)(4), or 5006(b), and shall not apply to an amount not to exceed $50,000,000 in any fiscal year which the President may make available from the Fund to carry out section 311(c) of the Federal Water Pollution Control Act, as amended by this Act, and to initiate the assessment of natural resources damages required under section 1006. Sums to which this subsection applies shall remain available until expended.⟧

(b) EXCEPTIONS.—

(1) IN GENERAL.—Subsection (a) shall not apply to—

(A) section 1006(f), 1012(a)(4), or 5006(b); or

(B) an amount not exceeding $60,000,000 for any fiscal year that the President may make available from the Fund to—

(i) carry out section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)); and

(ii) conduct the assessment of natural resource damages required under section 1006;

(2) AVAILABILITY.—Amounts to which this subsection applies shall remain available until expended.

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SEC. 7001. OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM.

(a) INTERAGENCY COORDINATING COMMITTEE ON OIL POLLUTION RESEARCH.—

(1) ESTABLISHMENT.—There is established an Interagency Coordinating Committee on Oil Pollution Research (hereinafter in this section referred to as the "Interagency Committee").

(2) PURPOSES.—The Interagency Committee shall coordinate a comprehensive program of oil pollution research, technology development, and demonstration among the Federal agencies, in cooperation and coordination with industry, universities, research institutions, State governments, and other nations, as appropriate, and shall foster cost-effective research mechanisms, including the joint funding of research.

(3) MEMBERSHIP.—The Interagency Committee shall include representatives from the Department of Commerce (including the National Oceanic and Atmospheric Administration and the National Institute of Standards and Technology), the Department of Energy, the Department of the Interior (including the Minerals Management Service and the United States Fish and Wildlife Service), the Department of Transportation (including the United States Coast Guard, the Maritime Administration, and the Research and Special Projects Administration), the Department of Defense (including the Army Corps of Engineers and the Navy), the Environmental Protection Agency, the National Aeronautics and Space Administration, and the United States Fire Administration in the Federal Emergency Management Agency, as well as such other Federal agencies as the President [may designate. A representative] *may designate. A representative* of the Department of Transportation shall serve as Chairman.

(4) DISSEMINATION OF INFORMATION.—The Interagency Committee shall disseminate and compile information regarding previous spills, including data from universities, research institutions, State governments, and other nations, as appropriate.

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UNITED STATES CODE

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

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CHAPTER 26—WATER POLLUTION PREVENTION AND CONTROL

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§ 1321. Oil and hazardous substance liability

(a) DEFINITIONS.—

* * * * * * *

(c) FEDERAL REMOVAL AUTHORITY.—

(1) GENERAL REMOVAL REQUIREMENT.—

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(3) ACTIONS IN ACCORDANCE WITH NATIONAL CONTINGENCY PLAN.—

(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j) of this section, [or as directed by the President] *unless the President or the on-scene coordinator determines that deviation from the plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.*

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(j) NATIONAL RESPONSE SYSTEM.—

(1) IN GENERAL.—

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(2) NATIONAL RESPONSE UNIT.—The Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit at Elizabeth City, North Carolina, The Secretary, acting through the National Response Unit—

(A) shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide and within the areas designated by the President pursuant to paragraph (4), which shall be available to Federal and State agencies and the public;

(B) shall provide technical assistance, equipment, and other resources requested by a Federal On-Scene Coordinator;

(C) shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President pursuant to paragraph (4);

(D) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4);

(E) shall administer Coast Guard strike teams established under the National Contingency Plan;

(F) shall maintain and update a body of information on the environmental effects of various types of oil spills and how best to mitigate those effects, which shall be kept in a form that is readily transmittable to response teams responding to a spill under this Act;

(G) shall maintain on file all Area Contingency Plans approved by the President under this subsection; and

(H) shall review each of those plans that affects its responsibilities under this subsection.

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(4) AREA COMMITTEES AND AREA CONTINGENCY PLANS.—

(A) * * *

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(B) Each Area Committee, under the direction of the Federal On-Scene Coordinator for its area, shall—

(i) prepare for its area the Area Contingency Plan required under subparagraph (C);

(ii) work with State and local officials to enhance the contingency planning of those officials and to assure preplanning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife*, including advance planning with respect to the closing and reopening of fishing grounds following an oil spill*; and

(iii) work with State and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

* * * * * * *

(C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall—

(i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

(ii) describe the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

(iii) describe in detail the responsibilities of an owner or operator and of Federal, State, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iv) list the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator and Federal, State, and local agencies, to ensure an effective and immediate removal of a discharge,

and to ensure mitigation or prevention of a substantial threat of a discharge;

(v) describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

(vi) describe in detail how the plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans approved under this subsection, and into operating procedures of the National Response Unit;

(vii) develop a framework for advanced planning and decisionmaking with respect to the closing and reopening of fishing grounds following an oil spill, including protocols and standards for the closing and reopening of fishing areas;

(viii) compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or where appropriate, participate in meetings of the scientific support term convened in response to a spill;

[(vii)**]** *(ix)* include any other information the President requires; and

[(viii)**]** *(x)* be updated periodically by the Area Committee.

(D) The President shall—

(i) review and approve Area Contingency Plans under this paragraph; **[**and**]**

(ii) periodically review Area Contingency Plans so approved**[**.**]***; and*

(iii) acting through the Under Secretary of Commerce for Oceans and Atmosphere and in consultation with the Administration, the Commissioner of Food and Drugs, the Director of the United States Fish and Wildlife Service, and other affected Federal and State agencies, issue guidance for Area Committees to use in developing for Area Committees to use in developing a framework for advanced planning and decisionmaking with respect to the closing and reopening of fishing grounds following an oil spill, which guidance shall include model protocols and standards for the closing and reopening of fishing areas.

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UNITED STATES CODE

TITLE 46—SHIPPING

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CHAPTER 37—CARRIAGE OF LIQUID BULK DANGEROUS CARGOES

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§ 3715. Lightering

(a) * * *

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(b) The Secretary shall prescribe regulations to carry out subsection (a) [of this section] *that include requirements that the Secretary determines will provide protection to the environment that is as substantial as is economical and technologically feasible.* The regulations shall include provisions on—

(1) minimum safe operating conditions, including sea state, wave height, weather, proximity to channels or shipping lanes, and other similarly factors;

(2) the prevention of spills;

(3) equipment for responding to spill;

(4) the prevention of any unreasonable interference with navigation or to other reasonable uses of the high seas, as those uses are defined by treaty, convention, or customary international law;

(5) the establishment of lightering zones; and

(6) requirements for communication and prearrival messages.

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